IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1537 to 1542 of 1988
WITH
FIRST APPEAL No. 1547 to 1552 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

and

MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

STATE OF GUJARAT

Versus

KHANT KANJI RANA

Appearance :
Mr. PG Desai, GP for Appellant in First Appeal No. 1537 & 1538 of 1988
Mr. LR Pujari, AGP for Appellant in First Appeal No. 1539 & 1540 of 1988
Mr. AJ Desai, AGP for Appellant in First Appeal No. 1541 & 1542 of 1988
MR PV HATHI for Respondent No. 1 in F.A. Nos. 1537 to 1542 of 1988 and Advocate for the Appellant in F.A. No. 1547 to 1552 of 1988

Mr. P.G.Desai, GP for the Res.in First Appeal No. 1547 & 1548 of 1988
Mr. L.R. Pujari, AGP for the Res. in First Appeal No. 1549 & 1550 of 1988
Mr. A.J. Desai, AGP for the Res. in First Appeal No. 1551 & 1552 of 1988

CORAM : MR.JUSTICE J.N.BHATT and
MR.JUSTICE J.R.VORA
Date of decision: 18/12/97

ORAL COMMON JUDGEMENT:

In this group of 12 Appeals under Section 54 of the Land Acquisition Act, 1894, we are called upon to consider and adjudicate upon as to whether the impugned common judgment and resultant awards for compensation to the original claimants for the acquisition of their lands in treating and taking as non-agricultural properties though in reality and admittedly, the lands of the original claimants are agricultural, and some of them are jirayat, and some of them are bagayat, and including some kharabha portions, by its common judgment, dated 30.3.1988, at the additional rate of Rs.20 per sq.yard setting aside the award of the Land Acquisition Officer dated 26.10.1981.

2. A conspectus of the material facts giving rise to the present group of Appeals is required to be narrated at this juncture hereunder:

3. The appellants in First Appeal Nos. 1547 of 1988 to 1552 of 1988 and the respondents in First Appeal Nos. 1537 to 1542 of 1988 are the original claimants, whose agricultural lands came to be acquired by the State of Gujarat pursuant to the Notification published in official gazette on 2.10.1980 under Section 4(1) of the LA Act followed by the publication of the Notification dated 5.12.1980 under Section 6(1) of the LA Act for the purpose in connection with Uben Irrigation Scheme.

4. The agricultural lands of the original claimants are situated in the outskirts of village Bhatgam. Some of the lands are irrigated and some of the lands are non-irrigated. The acquisition was done by observing requisite procedure by the Land Acquisition Officer concerned, including the report under Section 5(c) and under Section 9 of the Act. It is also noticed from the record and from Form No.12 that lands bearing Revenue Survey No. 154, 155 and 156 were non-irrigated lands,

whereas lands bearing Survey Nos. 159 and 157 were irrigated lands and lands forming part of Survey No.156 was of Kharaba land.

5. All the acquired lands situated at village Bhatgam in Junagadh District were of old tenure lands. Village Bhatgam is at the distance about 15 kms from the Taluka headquarter and the nearest railway station is at the distance of 20 kms known as Veraval railway station. The total population of the village Bhatgam was about 2000 persons when the acquisition process commenced.

6. The Land Acquisition Officer, by his Award dated 2.10.1988 offered the compensation in respect of acquired land, at the rate of Rs. 90 per Are for non-irrigated land and Rs. 130 per Are for irrigated land, whereas he offered Re.1 per Are for kharabha land. He also awarded solatium at the rate of 15 per cent. No advance amount had been paid to the claimants. Pursuant to the award of the Land Acquisition Officer, he offered total amount of Rs.2,03,522.46ps in respect of acquired lands of the claimants under Section 11 of the LA Act.

7. Therefore, it can very well be visualised that the Land Acquisition Officer offered 0.90ps per Sq. meter in case of non-irrigated land, and Rs. 1.30ps per sq. meter in case of irrigated land, and Re.1 for kharabha land.

8. The claimants being dissatisfied by the award of the Land Acquisition Officer in respect of the acquired lands, six land reference cases came to be filed under Section 18 at the instance of the original claimants in the court. The District Court at Junagadh, registered the six Reference Cases under Section 18, which came to be forwarded by the Collector, being Land Reference Case Nos. 100/82 to 105/82 wherein an amount of Rs.40 per sq. yard came to be demanded by the claimants in Case No. 100/82, 102/82 and 102/82 whereas claimants in Reference Case Nos. 101/82, 104/82 and 105/82 made a claim of Rs. 57 per sq. meter.

9. The viva voce evidence led by the parties is consisted of following witnesses:

1. Mohan Kanjibhai - Exhibit 12

2. Sardulbhai Jivabhai - Exhibit 21

3. Ramji Jiva - Exhibit 23

4. Sangram Jiva -Exhibit 24

5. Gokal Nanji - Exhibit 25

6. Valjibhai Ghelabhai - Exhibit 27

7. Vallabh Vasaram - Exhibit 30

8. Premji Bijal - Exhibit 35

9. Dhirajlal Gobarbhai - Exhibit 37

10. Mulu Karshandas - Exhibit 38

11. Chandulal Dharmashi Jalawadiya - Exhibit 42

12. Sevantilal Popatlal Doshi - Exhibit 45

9. The Reference Court also placed reliance on the documentary evidence produced, at Exhibit, 29, and Exhibit 32. The sale instances prior to the date of the Notification under Section 4(1), which came to be gazetted, on 2.10.1980, and other documentary evidence to which reference will be made by us hereinafter as and when required, at the appropriate stage.

10. The Reference Court upon the assessment of the evidence led before it, after hearing the rival versions, partly allowed the References and enhanced the amount of compensation at additional rate of Rs. 20 per sq. yard in respect of acquired lands categorising, and treating all parcels of lands under acquisition as if they were non-agricultural properties, and also awarded the benefit emanated from the provisions of Section 23(1-A) of the LA act with interest and cost.

11. Being dissatisfied by the award recorded by the District Court at Junagadh, in the aforesaid group of Land Reference Cases, both the parties have come up before us challenging the legality and validity of the common judgment and awards in respect of the acquired lands by filing six appeals by each side, the numbers whereof we have indicated hereinbefore. That is how, we have taken up the entire group of 12 appeals for adjudication by a common judgment for the simple reason that the common questions are involved against the common judgment.

12. Learned Assistant Government Pleader Mr. A.J. Desai has raised following contentions for our consideration:

(1) That the Reference Court has committed serious illegality in treating and tying the lands in the entire group of matters as non-agricultural one whereas, in reality the acquired lands were agricultural at the relevant time.

(2) That the Reference Court has not followed the permissible legal principles and aspects in making the assessment of market value of the acquired lands.

(3) That the Reference Court has also committed illegality in granting the benefit of the provisions of Section 23(1-A) of the LA Act.

(4) That the reliance placed by the Reference Court on two sale instances, is not only misplaced but is not merited, for the simple reason that they were not in respect of agricultural lands and, therefore, it was contended that they were not comparable sale instances.

13. The learned Advocate Mr. Hathi while appearing for the original claimants, has countenanced the aforesaid contentions and has contributed following contentions and submissions in course of marathon hearing before us.

(1) That the Reference Court has rightly treated the acquired lands as non-agricultural lands for the purpose of making assessment of market value, and resultant compensation to the claimants. He has submitted that the acquired lands have been put to use for the purpose of establishment of a township, in view of the fact that the erst while Bhatgam came to be submerged because of Uben Irrigation Project. It is in this context, he submitted that though character of the acquired lands is of agricultural, could be taken as non-agricultural for the purpose of assessment of market value and compensation as there were building potentialities, and they were acquired for the purpose of establishment of a township. Thus, he has tried to justify the approach adopted by the Reference Court.

(2) That the Reference Court has assessed the market value of the acquired lands higher but has not given effect to that because some of the claimants made claim at the rate of 40 per sq. yard, and three claimants made claim at the rate of Rs. 57 per sq. yard. In other wards, it was vehemently contended that the Reference Court ought not to have taken the claim of the amount incorporated in the reference as a market value. Thus, he has also criticised the approach of the Reference Court.

(3) That the sale instances at Exhibits 29 and 32 are rightly relied on by the Reference Court inasmuch as they came to be executed prior to the date of Notification of the acquired land like that, 2.10.80 and proving them upon the evidence of one of the vendors or vendee.

(4) That the amount of compensation awarded by the Reference Court is on lower side and is required to be upwardly revised in the light of the sale instances placed on record and in absence of any other documentary evidence on the part of the acquiring authority.

14. Both sides have also placed reliance on number of authorities to which also reference will be made by us at the appropriate stage hereinafter.

15. LA Act is designed to empower the government to compulsorily acquire lands including the building for the public purpose upon giving the amount of just and reasonable amount of compensation to the affected parties. Therefore, the LA Act itself remained on the statute book for beyond a century, is indeed, providing statutory provisions for the acquisition of lands for public purpose and for companies. It can very well be seen from the aim and object of the preamble of the LA Act that it is devised and designed:

(i) to amend the law for the acquisition of land needed for public purposes and for Companies, and

(ii) to determine the amount of just and reasonable compensation to be paid on account of such acquisition. This is in short, the claim and the deceleration of the L.A. Act. We, at this juncture, do

not propose to divulge further examination and meticulous exercise insofar as objects and aims of the L.A. Act are concerned.

16. The mechanism for acquisition of the land is provided in the L.A. Act. The acquisition machinery and procedure are elaborately incorporated in Part-II in Sections 4 to 17. After undergoing the aforesaid statutory exercise, the government or the authority concerned is empowered to acquire lands for the public purposes.

17. In the event of any dissatisfaction to the owners of the lands or the claimants by the award of the Land Acquisition Officer recorded under Section-11 has the remedy, which is prescribed in Section 18 in Part-III. Part-III as such deals with the provisions relatable to the court and procedure drawn in Section 18(2) read with Section 20(a). Part-IV deals with apportionment of compensation, but, we are not concerned in the present group of Appeals, whereas Part-V makes provisions for effecting payment to the concerned claimants.

18. Insofar as the aforesaid question, in context, is concerned, we are called upon to determine and adjudicate upon, as to whether the assessment of the market value of the acquired land and resultant amount of compensation awarded to the respondents claimants, by its common judgment and award, requires modification, alteration and, if yes, downwardly or upwardly, in view of the six appeals filed by the claimants and the six appeals filed by the acquiring authority - state of Gujarat. It is, therefore necessary, first to examine the material evidence emerging from the record and the submissions for the purpose of ascertaining as to whether the assessment of market value made by the Land Acquisition officer or the determination of the market value as a common rate of amount claimed in the references by the claimants, is legal, valid or justified or not. With a view to ascertaining the merits of the appeals and the challenges against them, we have gone through dispassionately, the testimonials, schemes and the documentary evidence relied on by the parties and emerging from the record, and have given long patient hearing to the learned advocates appearing in this group of 12 appeals.

19. The Land Acquisition Officer while awarding an amount of compensation at the rate of 0.90ps per sq. meter for non-irrigated land, and Rs. 1.30 per sq.meter in case of irrigated land, and Re.1 per sq.meter in

respect of kharabha land came to be quashed by the Reference Court and substituted the amount of compensation, treating all the acquired lands as non-agricultural lands at the rate of Rs. 20 per sq.meter which is directly under challenge before us in this group of 12 appeals.

20. Before we divulge and deal with the rival submissions raised before us, which are hereinabove and also the host of the case laws relied on, we deem it expedient and appropriate to articulate the following aspects, which have remained, unchallengeable & unquestionable.

(1) The acquired lands are situated at the outskirts of village Bhatgam.

(2) The nature and the character of the acquired lands is falling in three categories, viz. (i) irrigated, (ii) non-irrigated and (iii) waste land (kharabha land).

(3) The acquired lands are in the area of undeveloped region. In other words, at the time of acquisition of the lands, the said parcels of lands were in undeveloped state.

(4) The acquired lands are admittedly agricultural lands. Some of them are irrigated (bagayat land) and some of them are non-irrigated (jirayat land) and part of them are also waste land (kharabha land).

21. It is noticed that the Land Acquisition Officer has placed reliance on the revenue record and the evidence, awarded an amount of compensation for the acquisition of the land into three categories:

(i) The acquiring authority like State of Gujarat has not led any evidence before the Reference Court in terms of sale instances.

(ii) Two sale instances are relied on by the original claimants which are admittedly not in respect of agricultural properties and despite that they came to be exhibited as comparable sale instances by the Reference Court.

(iii) The lands covered by the sale instances produced at Exhibits 29 and 32 are, no doubt, prior to the date of the notification under Section 4(1) of the L.A.Act, insofar as, the acquired lands are concerned. Therefore, they could be considered for the purpose of adjudicating upon the controversy between the parties, provided they are comparable and similarity is shown, which is not the factual scenario in the present group of appeals.

22. No convincing reason is assigned by the Reference Court as to why a common yardstick and formula is applied for compensation to all the categories of the land.

23. Apart from the fact that the lands covered by the sale instances at Exhibits 29 and 32 are of different character like that in respect of NA lands. They do not seem to be in the proximity of the lands acquired in the present case. Therefore, there is no dispute about the fact that the purpose, location, type, category, extent and what not. There is no similarity which would constitution a legally comparable evidence for determining just and reasonable amount of market value and resultant compensation as contemplated by the provisions of Section 23 of the LA Act.

24. The Reference Court has seriously committed error in placing reliance on the sale instances at Exhibits 29 and 32 for the reasons, which we have hastened to add hereinafter:

(i) Exhibit - 29 is in respect of non-agricultural land and sale deed Exhibit - 29 is in respect of NA land and at the consideration of Rs.97 per sq. meter whereas the land covered under the sale deed is situated at the distance about 3 to 4 kms and again very important aspect is it is in respect of only small extent of 104 sq. meter. Exhibit 29 is dated 29.8.79. Therefore, it is prior to the date of the Notification under Section 4(1) which came to be gazetted on 2.10.1980. The vendor Ghalabhai of the land under sale deed - Exhibit 29 is examined as support witness No.1 at Exhibit 27. Therefore, reliance was placed by the claimants which came to be exhibited by the Reference Court. Similarly, the reliance came to be placed on the sale instance produced at Exhibit 32. The

characteristics of the land covered under the Exhibit 32 sale deed must be noted, at this juncture. Of course, the vendee of the said parcel of plot or land Valjibhai Vasram was examined at Exhibit 30. Therefore, it is a legal evidence, which can be considered. But, the question which requires to be considered is as to whether at the relevant time, the parcel of land covered under the sale instance - Exhibit 32 could be said to be comparable. In this context, it may be noted that it is also a transaction in respect of a small parcel of land, admeasuring not more than 125 sq. meters. It is in respect of non-agricultural land. Of course, the amount of consideration in such sale instances was Rs. 65 per sq. meter. Again, an important thing, which requires to be noticed seriously is the distance of the said land from the acquired land. It is borne out succinctly from the record of the present case that the distance between the two is 4 to 5 kms. The Reference Court while examining the aforesaid sale instances, has made observations in the judgment, particularly, in para 19. We have gone through the entire impugned common judgment.

25. After having examined the aforesaid aspects and factual scenario emerging from the record of the present case and after having heard the learned advocates appearing for the parties, we have to raise our hands in helplessness and to plead our inability to accept the findings recorded by the Reference Court in fixing lumpsum amount of Rs. 20 per sq. yard ignoring the quality, type and nature of acquired lands, and in our opinion, the sale instances, which came to be led by the claimants and which came to be accepted by the Reference Court, is not proper, appropriate, and also illegal in the light of the celebrated principles of law which have been propounded, settled and explored by catena of judicial pronouncements and we would also refer the case laws hereinafter at appropriate stage.

26. It is very clear from Section 23 of the LA Act is very material for the simple reason that it prescribes the aspect, which need to be taken into consideration while fixing the amount of compensation to be awarded for the land acquired under the LA Act. It enumerates various matters to be considered in computing compensation. We, therefore, deem it necessary to have a close look into it.

23. Matters to be considered in determining compensation:-

(1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into considers:-

First, the market - value of the land at the date of the publication of the (notification under Section4, sub-section (1)];

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the declaration under Section 6 and the time of the Collector's taking possession of the land.

[(1-A) In addition to the market value of the land, as above provided, the Court shall in every award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of the publication of the notification under Section-4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation:- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order or any court shall be excluded.]

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of [thirty per centum] on such market-value, in consideration of the compulsory nature of the acquisition.

27. It can be very well seen from the aforesaid provisions of Section-23 that the determination of the market value of the land, the focus must be, on the date of the publication of the Notification under Section 4(1) of the Act. In other words, it is mandated that the market value of the land for the purpose of compensation has to be assessed at the date of the publication of the said Notification. The resultant damages on account of the acquisition of the land in one or other way suffered by the claimants are also required to be considered in computing the compensation in view of the provisions of Section 23. Section-23 enumerates the principles of compensation, whereas Section-24 of the LA Act prescribes the factors and the aspects which should not be taken into consideration and which should be neglected in determining the compensation. When the compulsory acquisition of land is directed or obtained, it is statutorily provided that the certain matters should be neglected in determining the compensation. It would, therefore, be material to have a glance at the statutory provisions of such aspects incorporated in Section 24 of the Act which reads as under:

24. Matters to be neglected in determining compensation.- But the Court shall not take into

consideration --

first the degree of urgency which has led to the acquisition;

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under Section 6, by or in consequence of the use to which it will be put;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the [notification under Section-4, sub-section (1)]; or

[eightly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.]

28. For the purpose of assessment of market value as on the date of the Notification under Section 4(1) of the Act, various aspects are required to be considered as provided under Section-23, and some of the factors should be neglected as provided statutorily under Section 24. This court in DB case, in SPECIAL LAND ACQUISITION OFFICER, KHEDA v. SHANTIBHAI JIVABHAI PATEL, reported in 1993(2) GLR 1289 (one of us Justice J.N. Bhatt, J. was

a party) has unequivocally stated the factors and principles for determining the market value relying on earlier decisions of the Apex Court.

29. In order to ascertain the market value, there are several methods and modes, which can be ascertained on the basis of:

(i) the opinion of the expert

(ii) the price of the land within a reasonable time of any bona fide transactions of purchase of land acquired or the land adjacent to the land acquired and (we emphasize) possessing similar advantages which means there should not be dissimilarity, and

(iii) the principle of capitalization like that the number of years purchase of the actual or immediately perspective parts of the land acquired.

30. No doubt, the aforesaid characteristics and aspects are enumerative and not exhaustive. In sum and substance, the court is obliged to consider as to what a reasonable prudent person would like to offer the amount of consideration, and which amount a reasonable and prudent seller would like to receive. It could, therefore, be concluded that the market value is to be assessed not merely by existing utility of the land but the best use, to which a willing purchaser would like to put it. Therefore, it has been repeatedly and rightly enunciated in number of decisions of the Apex Court that the court while considering the amount of compensation to be paid to the claimant, is obliged to put itself in an arm chair of a willing buyer and willing seller. What amount at the relevant point of time a willing buyer would like to pay, and what just and reasonable amount of consideration, the willing seller would like to accept, and what will be the test for determining the amount of compensation.

31. It could also very well be seen that the aspects and circumstances which should not be considered or in other words, which should also be neglected, has been statutorily provided in Section 24. The legislative draftsmanship after reading the provisions of Sections 23 and 24 of the Act, would, unequivocally, go to indicate that Parliament in its wisdom, has made positive provisions by prescribing Section 23 of the Act, which

says that the circumstances and the factors, which the court is bound to consider. Ordinarily, as we understand that the history of legislative drafting, positive provisions are usually incorporated in the light of the intendment and purpose of the Act, whereas in the present case, it can be seen and noticed that apart from positive provisions, which could be taken into consideration by the Court while determining the amount of compensation, the Legislature in its wisdom has also provided negative prescription, under which it is obligated that the matters enumerated therein should not be considered and included. We highlight this proposition of law for the reasons made and the submissions advanced before us, are a clear answer available under Section 24.

32. We also highlight one more important aspect. It is also a settled proposition of law that a reference under Section 18 of the LA Act is not an Appeal to the Civil Court against the award passed by the Collector. Against the amount offered in an award of the Land Acquisition Officer, under Section 11 is not an appeal. Consequently, the offer made by the Land Acquisition Officer after a long drawn procedure and exercise in a form of an award under Section 11 is subject to the judicial scrutiny by the Civil Court under Section 18 in a form of Reference. Therefore, court cannot take into account the material relied upon by the Land Acquisition Officer in his award unless the same material is placed and proved successfully. The Award of the Land Acquisition Officer cannot be treated as a judgment. It is an offer in the form of award and it is exposed to the challenge before the Civil Court and the scrutiny thereof. This proposition of law is fully reinforced by the important pronouncement of the Apex Court in the case of CHIMANLAL v. SPL. LAND ACQUISITION OFFICER, POONA, reported in AIR 1988 SC 1652.

33. It is, therefore, necessary to determine the following propositions and aspects while examining, considering and adjudicating upon the controversy in respect of the amount of compensation under Section 23 of the LA Act for the acquired land. A Division Bench of this Court in the case of SPL. LAND ACQUISITION OFFICER v. S.J. PATEL, reported in 1993 (2) GLR 1289 had highlighted the said aspects and it would, therefore, be necessary to enumerate the same hereunder:

"(1) A reference under Sec. 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition

Officer in his award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial court open or exposed to challenge before the Court hearing the reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4) The claimant is in the position of plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course, the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Sec.4 of the Land Acquisition Act (dates of Notifications under Secs. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Sec.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Sometimes instances are rigged up

in anticipation of acquisition of land.)

(9) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle
(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors."

34. We have no hesitation in holding that the Reference Court ought not to have considered the sale instances at Exhibits 29 and 32 relied on by the claimants. In other words the said sale deed cannot be relied on for the reasons which we propose to reiterate hereinafter and the Reference Court ought not to have taken into consideration on the following grounds:

(1) The aforesaid two sale instances - Exhibits 29 and 32 are not comparable. They are as such dissimilar. The dissimilarity is in following aspects:

(i) the Exhibit 29 is only in respect of 104 sq. meters of land whereas Exhibit 32 is in respect of plot admeasuring 125 sq. meters of land;

(ii) Nature and type of land. For that it may be stated that the acquired lands are admittedly agricultural lands whereas the lands covered under the aforesaid sale instances - Exhibits 29 and 32 are non-agricultural lands.

(iii) In view of the distance between the lands covered under the aforesaid sale instances at Exhibits 29 and 32, the acquired lands is roughly between 4 to 6 kms.

(iv) The acquired lands are undeveloped and situated and located at the outskirts of the small village Bhatgam. The population of the village was about 2000 persons at the relevant time.

35. It is in this context, we have no hesitation in holding that the aforesaid sale instances relied on by the Reference Court - Exhibits 29 and 32 being dissimilar, and incomparable, should not have taken into consideration for determining the quantum of compensation and assessment of market value. We are, therefore, left with no alternative but to exclude the aforesaid two sale instances being dissimilar and incomparable on the aforesaid count. With due respect to the Reference Court, the aforesaid sale instances are wrongly relied on and again Reference Court has committed serious error in treating the entire acquired lands as non-agricultural which is also not understood as to why flat rate of Rs.20 is adopted and applied to irrigated lands, non-irrigated lands and waste lands. In our opinion, the Reference Court has fallen in serious error of law and has adopted wrong principles for making the assessment of compensation under the Act.

36. Therefore, the question would arise now at this juncture is, to what the other evidence, which could be considered for the purpose of examining the adequacy or otherwise of the amount of compensation offered by the Land Acquisition Officer by its Award. Unfortunately, nothing has been successfully pointed out from the record which could be looked into and considered for the purpose of fixing just and reasonable amount of compensation. The oral evidence of the claimants ipso facto would not constitute a strong reliable basis for determining the amount of compensation. The reliance on the discussion of Sarpanch Premji Bijal, at Exhibit 35, is also out of misunderstanding and misconception of law. Apart from the fact that the oral version of applicant - witness

No.8 Premji Bijal, at Exhibit 35, is not reliable. His evidence, otherwise, also does not land any reinforcement to the version of the claimant in establishing that the market value of the acquired lands at the relevant time it was between Rs. 60 and 90 in absence of any documentary evidence, the testimonial collection of the other witnesses and the claimants and the acquiring authority have been thoroughly examined, but we have not been found any justifiable, dependable material or evidence, which could help us to determine the market value of the acquired land as on the date of the Notification under Section 4 (1). As against that, we are unable to agree with the award made by the Land Acquisition Officer in absence of the supporting material on the record of the Reference Court, we would like to caution that at times, the provision of Section 19 of the LA Act are not, scrupulously, observed resulting into such a stalemate.

37. Section 19 of the Act in terms provides as to what obligation is caused on the Collector while exercising power under Section 19 of the Act. Section 19 reads as under:

19. Collector's statement to the Court.-- (1) In making the reference, the Collector shall state for the information of the Court, in writing under his hand.

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under Sections 5 and 17, or either of them, and the amount of compensation awarded under Section 11;

(cc) the amount paid or deposited under sub-section (3-A) of Section 17; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing

made or delivered by, the parties interested respectively.

38. It is not disputed that in the present case, the mandate of Section 19 has not been observed. There is the purpose and policy behind the incorporation of the provisions in Section 19. We may not divulge ourselves into meticulous and minute aspects leading to the raise and the incorporation of Section-19, but suffice to say that there is a meaningful purpose behind the incorporation of Section 19 and since the mandate of Section 19 has remained unobserved, we are not in a position to support or confirm the offer made in the award by the Land Acquisition Officer. Again, it is also not possible for us for the simple reason that nothing has been, successfully, proved on behalf of the acquiring authority apart from the non-observance of Section 19 of the Act. The acquiring authority has also not placed material on record and proved to justify the conclusion reached by the Land Acquisition Officer. We have also took pain to note that despite the facts noticed by us from the evidence of one of the witnesses that there were earlier transactions in the same place where acquired lands are situated in respect of agricultural lands, we have not been understood as to why and how it has not been placed on record. It is in this context, we are left with no alternative but to remit the matter painfully to the Reference Court with the aforesaid directions.

RELEVANT CASE LAWS

39. During the course of the submissions before us both the sides have placed on reliance on various decisions. Therefore, at this stage, we propose to deal and discuss the case laws related.

40. Reliance is placed on a decision of the Apex Court in the case of K.S. PARIPOORNAN v. STATE OF KERALA, reported in AIR 1995 SC 1012. The proposition propounded in the said judgment, resulting common conflicting view is that if the acquisition proceedings are initiated prior to the date of commencement of the Amending Act 68 of 1984, the payment of additional amount under sub-section (1-A) of Section 23 of the LA Act is circumscribed to the cases and matters referred to in clauses (a) and (b) of Section 30 of the Act.

41. Under Section 23(1-A) an obligation to pay an additional amount by way of compensation has been statutorily mandated. Such an obligation did not exist

prior to the enactment of the said provision by the Amending Act. If the said provision is applied to the acquisition proceedings which commenced prior to its enactment and an additional obligation in the matter of payment of compensation is imposed for such acquisition the effect would be that the said provision would be operating retrospectively in respect of transactions already past. Parliament has made it abundantly clear by indicating its intention in Section 13(1A) of the Amending Act regarding the extent of retrospective operation that Section 23(1-A) will have since express provision is contained in Section 30(1) of the Amending Act manifestly indicating the intention of the Legislature as to the extent to which the provision of Section 23(1-A) would be attracted to pending proceedings. It was, therefore, held that there is no scope for speculating about the said intention of Parliament while interpreting the provisions of Section 23(1-A) in isolation without reference to Section 30(1) of the Amending Act.

42. In view of the aforesaid decision, the provisions of Section 23(1-A) would not be attracted in the present group of appeals for the obvious reasons that the award of the Land Acquisition Officer came to be recorded on 2.10.1980 under Section 11 pursuant to the Notification under Section 4(1) dated 21.6.1980. Despite, the unequivocal proposition of law extensively explored and laid down by the Apex Court and the clear provision under Section 23(1-A), the Reference Court fell in serious error in awarding and giving the benefit of the provisions of Section 23(1-A) of the LA Act. Therefore, the award of the Reference Court and the amount of solatium at the rate of 12% per annum on the market value in addition to the market value of the land granted by the Reference Court under Section 23(1-A) must be quashed and accordingly it is quashed hereby. We, therefore, make it clear that the claimants in the present case shall not be entitled to the benefit conferred under the provisions of Section 23(1-A) of the LA Act as they are not eligible and qualified in the scheme and the mechanism of the provision highlighted in the aforesaid case of K.S. Paripoornan (supra) of the Apex Court.

43. The principle laid down by the Apex Court in the case of VIJAY KUMAR MOTI LAL v. STATE OF MAHARASHTRA, reported in AIR 1981 SC 1632 is clear to the effect that while making assessment of market value of compensation, the sale value has to be reduced by one-third on the ground that acquisition of the land from the area which was not fully developed. In other words, in the case

like one on hand, when an acquired land forms part of undeveloped area, the court is obliged to deduct one-third of the amount of market value in order to develop that area at least the value of 1/3rd of the land or amended one will have to be deducted for roads, drainage, electricity and other amenities. Notwithstanding, the fact that the acquired lands came from the undeveloped area, the Reference Court has deducted one-third of the amount and again also deductions are made. It is not very clear as to why twice deductions are made, but it could be visualised that it may be on account of acquired lands being in undeveloped area and also in view of the extent of sale instances relied on, the lands covered were within the bracket of 125 square yard. Be it as it may, since we are not in a position to take a final view for making assessment of market value for the purpose of compensation in respect of the acquired lands. In other words, in absence of reliable materials, information or evidence, we deem it expedient to remit the matter to the Reference Court for fresh disposal after giving an opportunity of hearing to the parties concerned.

44. In support of the contentions that the court is obliged to consider the building potentialities of the acquired land while fixing the market value, the learned advocate for the claimants has placed reliance on the decision of the Apex Court in the case of P. RAM REDDY v. LAND ACQUISITION OFFICER, HYDERABAD URBAN DEVELOPMENT AUTHORITY, reported in (1995) 2 SCC 305. While highlighting the methods for valuation of building plots and considering the building potentialities, it has been observed in the said decision that the market value of the acquired land has building potentiality or not, has to be determined with reference to the material to be placed on record or made available by the parties concerned and not solely on surmises, conjectures, or pure guess work. It may also be mentioned that the acquired lands have been put to use for development of a new township, while in fact, that the acquired lands were fit for building a residential purpose and, therefore, the amount of compensation, ascertaining market value should be applied on the basis of properties being non-agriculture, though they are agriculture in reality is as such not supported by this decision. We cannot accept such contention because it renders counter to the legislative scheme and the provisions made in Section 24 of the Act. we have already considered the provisions of Section 24 hereinbefore. The ratio which is propounded in the decision of P. Ram Reddy (supra) goes to show that sofar as the provisions of Section 23 are concerned,

all the factors incorporated therein must be considered. It would be quite appropriate to high light that the Apex Court in the said decision has also clearly laid down that the acquisition of land for building purposes could not be said to be sufficient circumstances to regard it as a land with building potentiality. Precisely the same is the submission raised before us. Therefore, the said submission runs counter to the ratio propounded in the aforesaid decision of the Apex Court. It is in this context, it was observed that what is the building potentiality and what are the factors for considering the aspect of building potentiality, while making an assessment of compensation. When a land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged under Section 4(1) of the LA Act, must necessarily include that portion of the price of the land attributable to its building potentialities. Such price of the acquired land then becomes its market value envisaged under Section 23(1) of the LA Act.

45. It would also be interesting to mention in term it is held the mere fact that the acquired land had been acquired for building purposes, cannot be sufficient circumstance to treat it as a land with building potentiality. Possibility of user of the acquired land for building purposes can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be a matter of inference to be drawn based on appreciation of material placed on record to establish such possibility. Unfortunately, no material has been placed on the record of this group of appeals. Material so placed on record or made available must necessarily be attributable to the aspects and matters such as:

(i) the situation of the acquired land vis-a-vis the city or the town or village which hand been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population;

(ii) the suitability of the acquired land for putting up the buildings, be they residential, commercial or industrial, as the case may be;

(iii) possibility of obtaining water and electric supply for occupants of buildings to be put up on that land;

(iv) absence of statutory impediments or the like for using the acquired land for building purposes;

(v) existence of highways, public roads, layouts of building plots or developed residential extensions in the vicinity or close proximity of the acquired land;

(vi) benefits or advantages of educational institutions, health care centres, or the like in the surrounding areas of the acquired land which may become available to the occupiers of buildings, if built on the acquired land; and

(vii) lands round the acquired land or the acquired land itself being in demand for building purposes.

46. We are also tempted to mention that it is clearly observed in the said decision while appreciating the provisions of Section 23 of the LA Act that small parcels of land and/or small extent of land is sought to be sold on making an assessment of the market value of a big parcel of land. Then, in that case, the price or value stated in such a sale instance is insignificance. The sale deeds which are said to be relied on by the claimants and which have been relied on by the Reference court, are in respect of less than 150 sq. yards whereas the acquired lands runs into thousands and thousands of yards. Therefore, this decision, in our opinion, does not come to the rescue of the original claimants.

47. In CHIMANLAL HARGOVINDAS v. SPECIAL LAND ACQYUSUTUIB OFFICER, POONA , reported in AIR 1988 SC 1652 the Apex Court while examining the provision of Section -23, has highlighted the factors and manner,which have to be borne in mind the plus factors and minus factors are elaborately stated. It does not even remotely indicate that the future potentiality should be one of the considerations under plus factors. On the contrary, it has been clearly laid down that the deduction on the ground of largeness of lands has to be made. Otherwise also, there must be some material where the court could reach a definite and positive conclusion about the potentiality insofar as the provision of Section 23 are concerned on the date of the Notification under Section 4(1). This decision is followed by this Court in a Division Bench decision rendered in SPECIAL LAND ACQUISITION OFFICER v. S.J. PATEL, reported in 1993(2) GLR 1289. We have no hesitation in concluding that the said decision does not render any help to the claimants.

48. Very interesting submission! was made that the agricultural lands could be treated as non-agricultural lands for the purpose of assessment and fixing the market value under Section 23 on the ground that the acquired land have been put to non-residential use. This submission, in our opinion, is not merited, howsoever, in genuineness, it is settled but not sound. It is tempting but not acceptable. Reliance in support of the said contention came to be made in the case of JOGINDER SINGH SAINI v. STATE OF HARYANA, reported in AIR 1990 SC 1219,is in our opinion, misplaced. Claimants are not in a position to make any capital out of the said decision. It was contended that the proposition laid down in the said case that the non-agricultural land should be categorised as agricultural lands for the purpose of the assessment on the ground that the acquired lands have been put to NA use. It was a case of nursery plants and mother plants on the land acquired and in view of the peculiar facts and circumstances and special reasons, it was observed that land though agricultural could be treated as urban land for the assessment of its market value was found any factual scenerio in the case on hand.

49. The Apex Court has clearly laid down the proposition of law while interpreting the provisions under Section 23 for compensation in the case of acquired land. One-third of the market value should be deducted for development of lands. This is what precisely the Reference Court has done. In other words, in determining the market value, the price in sale or purchase of the land acquired within the reasonable time from the date of acquisition of the land in the area would be the best peace of evidence. As it is held in the said decision, where there are bona fide and genuine sale transactions in respect of the same land under acquisition wherein the claimants was vendee. It was observed that aspect must be considered. The said decision in the result does not take the case any further.

50. Insofar as the question of compensation and proof is concerned, it would hardly retain us in writing the proposition very well settled by now. The reference under Section 18 before the Court is not an appeal and the claimants or the owner of the land as such assume the character of a plaintiff. Therefore, it is he, who has to establish the plea raised by him because the probability of doctrine could be invoked nevertheless considering whether that doctrine could be invoked or not there must be some material. It is for the claimant, who

is as such in reality in the capacity of the plaintiff must successfully adduce the evidence in support of the contentions raised in the Reference Court. If some material is placed, which can be relied upon. Then, obviously, it would be for the acquiring authority or the officer to rebutt it. This proposition is explored and expounded by us in a Division Bench decision in CHIMANLAL KODARLAL v. THE DISTRICT DEPUTY COLLECTOR, reported in 3 GLR 787. We are not in a position to understand as to how this decision could even remotely come to the rescue of the claimants.

51. It must be reiterated even at the cost of the repetition that the provisions of Section 24 of the LA Act manifestly and expressly prohibited and puts an impediment and embargo upon the courts in taking the factors into consideration enumerated in Section 24. The contention of the claimants that the acquired lands have been put to use for non-agricultural purpose successfully. Developing a new township known as new Bhatgam goes to show that the acquired lands should be considered and treated at par with the non-agricultural land. The said submission, undoubtedly, runs counter and in the teeth of the provisions of Section 24 proviso 5.

52. It is in this context, it would be quite appropriate and interesting to consider the ratio propounded by the Apex Court in the case of TARLOCHAN SINGH v. THE STATE OF PUNJAB, reported in 1995 (2) JT 91. The propositions succinctly laid down in the said decision are : (1) the Section 24 of the LA Act expressly prohibits and puts an embargo on the court in taking the factors mentioned therein as relevant in determining the market value, (2) observed that the future development, potentiality and prospective use of the acquisition, etc. are not material and relevant circumstances even the purpose for the acquisition is also irrelevant; (3) that in case of sale transactions of small extent lands are totally irrelevant and cannot determine the compensation even they are comparable. This is a decision by a bench of three Hon'ble Judges rendered on 29.11.1994 which unequivocally supports the contention raised on behalf of the acquiring authority whereas the same runs absolutely counter to the proposition and contentions advanced on behalf of the claimants. Therefore, the said contentions raised on behalf of the claimants are not acceptable, sustainable as they are inmerited in view of the decision of the Apex Court in Tarlochan Singh (spura).

53. Reliance is placed on K.PADMARAJU v. SENIOR REGIONAL MANAGER, F.C.I., HYDERABAD, reported in (1996)

10 SCC 613. This decision is relied in support of the contention that sale deed in respect of small plot and post - notification sales are not relevant. This proposition is expounded in the said decision as we have seen hereinbefore that in the decision of the Apex Court in Tralochan Singh (supra) has again propounded the same proposition of law.

54. The principles of law governing the amount of compensation under Section 23 of the LA Act for the assessment of the market value are also lucidly expounded by the Apex Court in the case of SPECIAL LAND ACQUISITION OFFICER, DHARWAD v. TAJAR HANIFABI, reported in (1996) 10 SCC 627. It was held in the said case that it is not correct to award compensation after determining the market value on square foot basis relying on a sale transaction in respect of a small extent of land situated at a distance of 1.5 kms within the developed municipal area.

55. We are at great loss and not able to understand as to why the decision of the Apex Court in the case of MARKET COMMITTEE, HODAL v. KRISHAN MURARI, reported in (1996) 1 SCC 313 is sought before us for consideration though it does not applicable to the facts and circumstances of the case.

56. In LAND ACQUISITION OFFICER, HYDERABAD v. MALE PULLAMMA, reported in (1996) 8 SCC 247, the Apex Court has reiterated that the sale instances of small extent cannot form the sole basis for determination of compensation under Section 23. As such, this proposition has not been in controversy before us. Therefore, it would not retain us any further.

57. Again, the same principle of small extent of sale instance as stated earlier is propounded and reiterated in RATAN LAL GUPTA v. UNION OF INDIA, reported in (1996) 7 SCC 3. The sale instances of small extent is not relevant for determining value of a large track of land. Obviously, this proposition is extensively dealt with and very well extended in number of decisions. However, we are tempted to state the other observations made in the said decision by the Apex Court. It has been held that in an undeveloped area, like Greater Kailash-I in Delhi requiring further development. Therefore, the price of the developed area cannot be adopted as the basis to determine compensation of the acquired lands. In other words, if the acquired lands are undeveloped, none of the facts whether they are nearer to the developed area or not, the assessment of compensation fixed in the market

value cannot be formed upon the basis as developed area. The learned Advocate for the claimants are not in a position to make capital out of the said decision, on the contrary, it runs counter to one of the contentions.

58. Before parting with the decision, we would like to observe that we are conscious of the fact that in a claim compensation under the LA Act, which as stated, has to pass through long legal conduit pipe, and which is an extensive legal voyage. Ordinarily, this court while exercising its statutory power under Section 54 read with Section 96 of the Civil Procedure Code, would be loathe to resort to the order of remand. Obviously, by remitting the matter, there may be delay much less the expenditure. Therefore, ordinarily, courts without sending the matter to the trial court or the Reference Court could strive to find out from the evidence and to consider as to whether a just and reasonable amount of compensation in respect of acquired lands could be granted or not. Thus, we are conscious of the fact that ordinarily the positive approach of the court should be to consider whether a just and reasonable amount of compensation could be awarded from the facts and circumstances and evidence provided on record. Applying this test, we have not been able to cut short the legal journey and route. Therefore, painfully but dutifully we have to state that we are left with no alternative but to resort to order of remand in view of absence of necessary evidence and the application of wrong principles and terms adopted by the Reference Court. Obviously, therefore, in our opinion, this group of Appeals falls in an exceptional category and, therefore, we have to pass order for remand with appropriate directions while setting aside the impugned common judgment and respective awards insofar as the six appeals of the claimants are concerned and partly admitting the six appeals of the acquiring authority - state of Gujarat, with direction to affording opportunity of adducing evidence. In such a factual scenario, we are not able to find out any other alternative but to remit the cases to the Reference Court. In such a situation, when court is left with or rendered helplessness in fixing the market value under Section 23(1) of the L.A. Act including the fact that the Reference Court has adopted wrong principles of law and in absence of proof of the requisite material, the proposition laid down by the Apex Court in the case of AGRICULTURAL PRODUCE MARKET COMMITTEE v. LAND ACQUISITION OFFICER, reported in 1996 (7) SCALE, 625, it has been, succinctly, held that as to when remand is warranted in a case like one on hand. It has been, clearly, observed that the principles of compensation are

totally, wrongly applied by the court below resulting into wrong awards and decree, we are left with no alternative but to set aside the judgment and award and remit the matter for a fresh decision after affording opportunity to all the concerned parties to adduce evidence and decide the market value.

59. Having examined to the facts and circumstances and the entire testimonial collection and the documentary evidence and after having given our anxious thought to the submission and to the aforesaid case laws, we have no hesitation to hold:

(i) the claimants shall not be entitled to the benefit of the provision of Section23(1-A) of the L.A. Act;

(ii) the impugned common judgment and respective awards in all the six appeals (main Land Reference Cases) filed by the Appellants stand quashed and set aside;

(iii) This group of 12 Appeals is remanded to the Reference Court for a fresh decision after affording an opportunity of hearing to the respective parties in accordance with law so as to ascertain and determine the market value with direction to dispose of them on merits on or before 30th April, 1988 and with further direction to report to this Court about the progress made therein every month after the receipt of the record and proceedings and the writ of this Court;

(iv) Parties are directed to cooperate with the court so as to decide the Reference Cases within the limited prescribed time stated hereinabove. In the event of non-coperation by either of the parties, it will be open for the court to deal with in accordance with law or report to this court.

(v) The amount of compensation deposited pursuant to our directions by an order dated March 3, 1979, shall remain operative till the disputed question is finally adjudicated upon and it will not be open for the Reference Court to deal with or pass any order in connection with the amount deposited in the bank. In case of any difficulty, it will be open for the parties to approach this court

for appropriate order.

(iv) In case of any delay beyond the period of four months as prescribed by us in view of the age of litigation, by one and all concerned, shall be viewed seriously and create displeasure.

In view of the facts and circumstances, we deemed it expedient to dismiss the Appeal Nos.1547 to 1552 of 1988 filed by claimants and the appeal Nos. 1537 to 1542 of 1988 filed by the acquiring authority State of Gujarat, obviously, shall stand partly allowed and the parties are directed to bear their own costs. Office is directed to transmit the writ to the Reference Court forthwith along with the record and proceedings.

P.N.Nair